

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Peerless Indemnity Insurance Company

(b) County of Residence of First Listed Plaintiff Boston, Massachusetts

(c) Attorney's (Firm Name, Address, Telephone Number, and Email Address)

Emmett E. McGowan, Nelson Levine de Luca &amp; Hamilton, 518 Township Line Rd, Ste 300, Blue Bell, PA 19422, 215-358-5100, emcgowan@nldhlaw.com

**DEFENDANTS**Martin Enterprises, LLC, Select Medical Corporation and  
Select Physical Therapy Texas Limited PartnershipCounty of Residence of First Listed Defendant Lancaster, PennsylvaniaNOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 2201, 2202, 1332 and 1391

Brief description of cause:

Declaratory Judgment Complaint**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/01/2013

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Provide a brief explanation of why the cases are related.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**PEERLESS INSURANCE COMPANY**

**Plaintiff**

**v.**

**MARTIN ENTERPRISES, LLC, SELECT  
MEDICAL CORPORATION, and SELECT  
PHYSICAL THERAPY TEXAS LIMITED  
PARTNERSHIP**

**Defendants**

**This document has been filed  
electronically.**

**PEERLESS INSURANCE COMPANY'S  
COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, Peerless Insurance Company ("Peerless"), by its undersigned counsel, hereby submits this Complaint for Declaratory Judgment as follows:

**INTRODUCTION**

1. This is an action by Peerless for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relative rights, liabilities, and obligations, if any, of Peerless under a commercial general liability ("CGL") insurance policy issued to Defendant, Martin Enterprises, LLC ("Martin"), with respect to the claims described below.

2. In this civil action, Peerless seeks a declaratory judgment that it does not owe a duty to defend or indemnify Martin in connection with related civil actions now pending in the Court of Common Pleas of Dauphin County, Pennsylvania ("Dauphin County Action") and in the 99<sup>th</sup> District Court of Lubbock County, Texas ("Lubbock County Action").

**PARTIES**

3. Peerless is a corporation organized and existing under the laws of the state of New Hampshire maintaining a principal place of business at 175 Berkeley Street, Boston, Massachusetts.

4. Upon information and belief, Defendant Martin is a Pennsylvania Limited Liability Company with a registered address of 831/2 East Orange Street, Lancaster, Lancaster County, Pennsylvania 17602.

5. Upon information and belief, Martin has one member, David L. Martin, who is a citizen of Pennsylvania residing at 831/2 East Orange Street, Lancaster, Lancaster County, Pennsylvania 17602.

6. Upon information and belief, Defendant Select Medical Corporation is a Delaware Corporation whose principal place of business is located at 4714 Old Gettysburg Road, Mechanicsburg, Pennsylvania 17055.

7. Upon information and belief, Defendant Select Medical Corporation regularly conducts business in, and has substantial contacts with, the Eastern District of Pennsylvania.

8. Upon information and belief, Defendant Select Physical Therapy Texas Limited Partnership (“Select Physical Therapy”) is an Alabama limited partnership whose principal place of business is located at 4714 Old Gettysburg Road, Mechanicsburg, Pennsylvania 17055.

9. Upon information and belief, Select Physical Therapy Holdings is the General Partner of Select Physical Therapy, and is a Delaware Corporation whose principal place of business is located at 4714 Old Gettysburg Road, Mechanicsburg, Pennsylvania 17055.

10. Upon information and belief, Select Physical Therapy Network Services, Inc. is the Limited Partner of Select Physical Therapy, and is a Delaware Corporation whose principal place of business is located at 4714 Old Gettysburg Road, Mechanicsburg, Pennsylvania 17055.

### **JURISDICTION AND VENUE**

11. This action is brought pursuant to 28 U.S.C. §§ 2201 and 2202 (relating to declaratory judgments) for the purpose of determining an actual controversy between the parties as hereinafter described.

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C.A. § 1332 (diversity of citizenship) because there is complete diversity of parties and the amount in controversy is in excess of \$75,000 exclusive of interest and costs.

13. Venue is proper in this Court pursuant to 28 U.S.C.A. § 1391(a) because all defendants are residents of the Eastern District of Pennsylvania.

### **FACTUAL AND PROCEDURAL BACKGROUND**

14. Peerless incorporates herein paragraphs 1 through and including 13 above as if the same were fully set forth at length.

15. Peerless issued a CGL policy to Martin, bearing policy number CBP 8294209 with an effective date of June 26, 2007 and a termination date of June 26, 2008 (the “Martin Policy”). A true and correct copy of the Martin Policy is attached hereto and made a part hereof as Exhibit “A”.

16. The Martin Policy provides, *inter alia*, the following pertinent provisions:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE (Form CG 00 01 10 01)**

##### **SECTION I — COVERAGES**

##### **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

###### **1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We

will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III** — Limits of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages **A** and **B**.

**b.** This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage” occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section **II** — Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

\* \* \*

## **2. Exclusions**

This insurance does not apply to:

\* \* \*

**b. Contractual Liability**



“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
  - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**j. Damage to Property**

"Property damage" to:

- (4) Personal property in the care, custody or control of the insured.

\* \* \*

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance ; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b. This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

## **2. Exclusions**

This insurance does not apply to:

### **a. Knowing Violation Of Rights Of Another**

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”.

\* \* \*

### **e. Contractual Liability**

“Personal and advertising injury” for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### **f. Breach Of Contract**

“Personal and advertising injury” arising out of a breach of contract, except an implied contract to use another’s advertising idea in your “advertisement”.

\* \* \*

## **SECTION V – DEFINITIONS**

1. “Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and



- b. Regarding web-sites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

\* \* \*

- 3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

- 13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

- 14. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
- f. The use of another’s advertising idea in your “advertisement”; or
- g. Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

\* \* \*

- 17. “Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

\* \* \*

**EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-  
MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING  
MATERIAL OR INFORMATION  
(CG 00 67 03 05)**

- a. The following exclusion is added to Paragraph 2., Exclusions of Section I  
– Coverage A – Bodily Injury and Property Damage Liability:

**2. Exclusions:**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF  
STATUTES**

“Bodily injury” or “property damage” arising directly or indirectly out  
of any action or omission that violates or is alleged to violate:

- c. Any statute, ordinance or regulation, other than TCPA or CAN-  
SPAM Act of 2003, that prohibits or limits the sending, transmitting,  
communicating or distribution of material or information.

- b. The following exclusion is added to Paragraph 2., Exclusions of Section I  
– Coverage B – Personal and Advertising Injury Liability:

**2. Exclusions:**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF  
STATUTES**

“Personal and advertising injury” arising directly or indirectly out of  
any action or omission that violates or is alleged to violate:

- c. Any statute, ordinance or regulation, other than TCPA or CAN-  
SPAM Act of 2003, that prohibits or limits the sending, transmitting,  
communicating or distribution of material or information.

\* \* \*

17. On May 1, 2007, Select Medical Corporation acquired the outpatient rehabilitation business of HealthSouth Corporation, and thereafter began closing a number of former HealthSouth facilities.

18. Sometime in 2007, Select Medical Corporation and/or Select Physical Therapy entered into a contract with Joseph J. Dux (“Dux”) whereby Dux was engaged to oversee the closure and relocation of HealthSouth facilities to Select facilities, including a HealthSouth outpatient facility in Levelland, Texas.

19. Dux, in turn, engaged the services of Martin to travel to Texas to supervise the moves, including the relocation of the Levelland facility to a different Select facility.

20. Select Medical Corporation and/or Select Physical Therapy hired several other entities to assist with the moves, including: InSite Logistics, LLC; United Van Lines, LLC; and UniGroup, Inc. (collectively, “InSite”).

21. InSite contracted with its local affiliate, Armstrong Moving & Storage, Inc. (“Armstrong”) to arrange for moving crews, trucks, and other logistical services.

22. On October 24, 2007, Martin’s owner, David Martin, arrived at the Levelland facility to oversee its closure and to move its contents to a different location.

23. The following day, police officers discovered that financial records, medical records and other confidential information had been thrown in a dumpster located behind the Levelland facility.

24. The Texas Offices of the Attorney General – Consumer Protection Division brought a civil action against Select Medical Corporation and Select Physical Therapy alleging, *inter alia*, violations of Texas privacy statutes.

25. On July 16, 2008, Select Medical Corporation and Select Physical Therapy entered into an Agreed Final Judgment and Permanent Injunction (“Settlement Agreement”) with the State of Texas.



26. Pursuant to the Settlement Agreement, Select Medical Corporation and Select Physical Therapy agreed to:

- a. Make a monetary payment to the State of Texas in the amount of \$990,000; and
- b. implement training programs and other measures to supplement Select's existing policies and procedures for handling personal and confidential information contained in patient records.

27. On or about August 18, 2008, Select Medical Corporation and Select Physical Therapy initiated the Dauphin County Action by filing a Civil Complaint against, *inter alia*, Martin.

28. On June 1, 2010, the Dauphin County Court of Common Pleas issued an Order dismissing Armstrong from the suit for lack of personal jurisdiction.

29. Thereafter, Select Medical Corporation and Select Physical Therapy initiated the related Lubbock County Action in which it named various defendants, including Martin.

30. On or around February 23, 2011, Select Medical Corporation and Select Physical Therapy filed a Second Amended Complaint in the Dauphin County Action in which it pleaded causes of action against Martin for: breach of contract; negligence; indemnity; and bailment. A true and correct copy of the Dauphin County Second Amended Complaint is attached hereto as Exhibit "B".

31. On or around April 26, 2012, Select Medical Corporation and Select Physical Therapy filed a Second Amended Petition in the Lubbock County Action in which it pleaded causes of action against Martin for negligence, indemnity and equitable subrogation. A true and correct copy of the Lubbock County Second Amended Petition is attached hereto as Exhibit "C".

32. Peerless has provided a legal defense to Martin for both the Dauphin County and Lubbock County actions, subject to a full reservation of Peerless' right to deny indemnification and withdraw from the defense of the matters on the basis that all or some of the claims are not covered under the Martin Policy.

**COUNT I -ACTION FOR DECLARATORY JUDGMENT THAT PEERLESS DOES NOT OWE DEFENSE OR INDEMNIFICATION TO MARTIN**

33. Peerless incorporates herein paragraphs 1 through and including 32 above as if the same were fully set forth at length.

34. Peerless does not owe a defense or indemnification to Martin because, in the underlying actions, Select Medical Corporation and Select Physical Therapy have not alleged injuries that are covered by the Martin Policy.

35. Section A of the Martin Policy only provides coverage for "bodily injury" or "property damage."

36. Section B of the Martin Policy only provides coverage for "personal and advertising injury."

37. In the underlying actions, Select Medical Corporation and Select Physical Therapy have not alleged "bodily injury," "personal injury," or "personal and advertising injury."

38. Additionally and or alternatively, Peerless does not owe a defense or indemnification to Martin because various policy exclusions apply to bar coverage.

39. The Martin Policy's Breach of Contract exclusion serves as a complete bar to coverage.

40. The Martin Policy's Exclusion – Violation of Statutes that Govern E-Mails, Fax, Phone Calls or Other Methods of Sending Material or Information endorsement serves as a complete bar to coverage.

41. The Martin Policy's Professional Services Exclusion endorsement serves as a complete bar to coverage.

42. The Martin Policy's care, custody or control exclusion serves as a complete bar to coverage.

**WHEREFORE**, Peerless respectfully requests this Honorable Court to grant judgment in its favor and against Defendants and prays for the following relief:

- a. A declaration of the Court that the Martin Policy provides no coverage for Martin, Select Medical Corporation, Select Physical Therapy, or any other party for any claims at issue in the underlying actions;
- b. A declaration of the Court that Peerless is not required to defend Martin, or any other party, in the underlying actions;
- c. A declaration of the Court that Peerless is not required to indemnify Martin, Select Medical Corporation, Select Physical Therapy, or any other party for any judgment that may be entered against Martin in the underlying actions;
- d. A declaration of the Court that Peerless has no obligation to any party for any defense costs incurred in the underlying actions;
- e. Award such other relief as the court deems appropriate, including attorney's fees and costs.



**NELSON LEVINE de LUCA & HAMILTON**

**BY:**   
EMMETT E. MCGOWAN, ESQUIRE

PA Attorney ID: 209545

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Suite 300

Blue Bell, PA 19422

215-358-5100

215-358-5101 (fax)

Attorneys for Peerless Insurance Company

Dated: May 1, 2013

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PEERLESS INSURANCE COMPANY

Plaintiff

v.

MARTIN ENTERPRISES, LLC, SELECT  
MEDICAL CORPORATION, and SELECT  
PHYSICAL THERAPY TEXAS LIMITED  
PARTNERSHIP

Defendants

This document has been filed  
electronically.

EXHIBITS TABLE OF CONTENTS

<u>Exhibit</u>	<u>Description</u>
A	Policy
B	Dauphin County Second Amended Complaint
C	Lubbock County Second Amended Petition

# **EXHIBIT A**





Ohio Casualty Insurance Company  
P. O. Box 515097  
Los Angeles, CA 90051-5097  
800-382-1223  
Fax: 888-268-8840  
[claimsmailoc@ohiocasualty-ins.com](mailto:claimsmailoc@ohiocasualty-ins.com)

October 8, 2012

Nelson, Levine, de Luca & Hamilton  
518 East Township Line Road  
Suite 300  
Blue Bell, PA 19422

Attn: William O. Krekstein, Esq.

Re: 104946410  
Insured: Martin Enterprises, LLC  
Plaintiff: Select Medical  
Date of Incident: 10/25/2007  
Policy Number: CBP8294209  
Underwriting Company: Peerless Insurance Company

Dear Mr. Krekstein:

I have enclosed a certified copy of the captioned policy for your review in this matter. Thank you for your assistance.

Very truly yours,



Lewis Harrell  
Sr. Claims Specialist III – CL  
Ohio Casualty Insurance  
800-382-1223 Ext 2354  
[lewis.harrell@ohiocasualty-ins.com](mailto:lewis.harrell@ohiocasualty-ins.com)

**Ohio Casualty™ member underwriting companies:**

American Fire and Casualty Company, Consolidated Insurance Company, Excelsior Insurance Company, Indiana Insurance Company, Mid-American Fire & Casualty Company, The Midwestern Indemnity Group, Montgomery Mutual Insurance Company, The Netherlands Insurance Company, The Ohio Casualty Insurance Company, Ohio Security Insurance Company, Peerless Indemnity Insurance Company, Peerless Insurance Company, West American Insurance Company  
(Not all companies may be licensed in all states.)

Martin001149

\_\_\_\_CBP 8294209\_\_\_\_(Policy Number)

I hereby certify that the attached policy is a true and accurate copy of the policy as it appears on the records of the company.

By:

MARY CHIDLOW

 (Signature)

PBMS Service Delivery Team Lead – Underwriting Support (Title)

\_\_\_\_Peerless Insurance Company\_\_\_\_ (Underwriting Company)

**Certified Copy Enclosure Letter**

October 2, 2012

Lewis Harrell  
275 Grandview Avenue, Suite 300  
Camp Hill, PA 17011

RE: Insured: Martin Enterprises, LLC.  
Effective Dates: 06/26/07 – 06/26/08  
Policy Number: CBP 8294209  
Underwriting Company: Peerless Insurance Company

Dear Mr. Harrell,

Pursuant to your request, enclosed find a certified copy of the policy(ies) issued to the above insured(s).

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Chidlow".

Mary Chidlow  
PBMS CL UW Support TL

Enclosure - Certified Policy(ies)



\*010A010829420900PACBPPQRO061\*



Peerless Insurance  
62 Maple Ave.  
Keene, NH 03431

INSURED COPY

MARTIN ENTERPRISES LLC  
831 1/2 E ORANGE ST  
LANCASTER PA 17602

MARTIN ENTERPRISES LLC  
831 1/2 E ORANGE ST  
LANCASTER PA 17602

TO:

INSURED COPY

Peerless Insurance  
62 Maple Ave.  
Keene, NH 03431

06/26/2007

8294209

NPCOXKJU2206

PGDM060D J02188

PCAOPPN 00001257 Page 2

Martin001153



Coverage is provided in:  
**PEERLESS INSURANCE COMPANY - A STOCK COMPANY**

This policy has been prepared for:

**MARTIN ENTERPRISES LLC  
831 1/2 E ORANGE ST  
LANCASTER PA 17602**

Agent Name and Address:

**GOOD'S INSURANCE AGENCY INC  
352 EAST MAIN STREET SUITE 200  
LEOLA PA 17540**

Agent Code: **3710525**

Agent's Phone Number: (717)-661-6100

Your insurance policy is enclosed. Please place it with your important papers.

Thank you for selecting us to service your insurance needs!

**INSURED COPY**

**INSURED COPY**

06/26/2007

8294209

NPCOXKJU2206

PGDM060D J02188

PCAOPPN 00001259 Page 4

Martin001155



## **TERRORISM INSURANCE PREMIUM DISCLOSURE** **AND OPPORTUNITY TO REJECT**

**This notice contains important information about the Terrorism Risk Insurance Act and your option to reject terrorism insurance coverage. Please read it carefully.**

### **THE TERRORISM RISK INSURANCE ACT**

The Terrorism Risk Insurance Act ("TRIA" or the "Act") establishes a temporary program to spread the risk of catastrophic losses from certain acts of terrorism between insurers and the federal government.

TRIA requires insurers to pay losses from "certified acts of terrorism" up to an amount equal to a percentage of its direct earned premium ("insurer deductible"). If an individual insurer's losses exceed this amount, the government will reimburse the insurer for 90% of losses paid in excess of the deductible, provided that aggregate industry losses from such an act exceed \$50 million. In 2007, the government's percentage share of losses paid above the insurer deductible will be 85% and will only be triggered if aggregate losses exceed \$100 million. An insurer that has met its insurer deductible is not liable for any portion of losses in excess of an industry aggregate loss of \$100 billion per year. Similarly, the federal government is not liable for any losses covered by the Act that exceed this amount.

### **MANDATORY AVAILABILITY OF COVERAGE FOR "ACTS OF TERRORISM"**

TRIA requires insurers to offer coverage for losses resulting from "certified acts of terrorism" that could otherwise be excluded, and to specify the premium for this coverage. Insurers are also required to disclose the premium for coverage for losses that result from "certified acts of terrorism" where exclusions are not permitted by state law.

A "certified act of terrorism" means: any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

### **REJECTION OF TERRORISM INSURANCE COVERAGE - WHAT YOU MUST DO**

We have included in your policy coverage for losses resulting from "certified acts of terrorism" as defined above.

THE PREMIUM CHARGE FOR THIS COVERAGE APPEARS ON THE DECLARATIONS PAGE OF THE POLICY AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT. If we are providing you with a quote, the premium charge will also appear on your quote as a separate line item charge.

**Important:** Please note that even if you elect to purchase coverage for "certified acts of terrorism", losses caused by war will still be excluded from coverage under your policy. Losses resulting from terrorist acts that the Secretary of the Treasury fails to certify as falling within the Act, such as those that are the result of a terrorist act that was not committed on behalf of any foreign person or foreign government and which exceed an aggregate cost to the insurance industry of \$25 million, will also be excluded unless such coverage is separately offered by the company and purchased by you.

**Note:** if you have rejected coverage for "certified acts of terrorism" in your underlying liability insurance and you have a Commercial Umbrella Liability Policy with us, you must also reject coverage for "certified acts of terrorism" in that Commercial Umbrella Liability Policy

**Note also:** if your policy covers locations in more than one state, the rejection of coverage would only apply in those states that allow exclusions for a "certified acts of terrorism."

There are two final limitations that are critical to note:

First, TRIA no longer applies to the following types of policies: commercial auto, burglary and theft (i.e. commercial crime), surety, professional liability, and farm owners multiperil. This notice does not apply to any of those coverages.

Second, TRIA is currently set to expire on December 31, 2007.

- If some form of TRIA is extended with changes or becomes law and we are required to offer you the coverage, we may: notify you of these changes, endorse the policy to reflect the current law, and/or revise the TRIA charge on your policy to reflect changes in the exposure.
- If TRIA expires and you have not rejected this coverage, your policy will continue to provide coverage for terrorism losses subject to all policy provisions.

**ST-ML-505 (01/07)**

**Page 1 of 2**

IF YOU CHOOSE TO REJECT THIS COVERAGE, PLEASE CHECK THE BOX BELOW, SIGN THE ACKNOWLEDGMENT AND RETURN IT IN THE ENCLOSED ENVELOPE. Please ensure any rejection is received within thirty (30) days of the effective date of your policy.

\_\_\_\_\_ I hereby reject this offer of coverage. I understand that by rejecting this offer, I will have no coverage for losses arising from a "certified acts of terrorism" and my policy will be endorsed accordingly. I also understand that if I reject this offer but TRIA expires and the insurer is not permitted by state law to exclude terrorism, that I may be charged additional premium for this state mandated coverage.

Note that certain states (currently CA, CT GA, IA, IL, MA, ME, MO, NY NC, NJ, PA, RI, VA, and WI) mandate coverage for loss caused by fire following a "certified act of terrorism" in certain types of insurance policies. If you reject TRIA coverage in these states on those policies, you will not be charged any additional premium for that state mandated coverage.

\_\_\_\_\_  
Policyholder/Applicant Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

THE SUMMARY OF THE ACT AND THE COVERAGE UNDER YOUR POLICY CONTAINED IN THIS NOTICE IS NECESSARILY GENERAL IN NATURE. YOUR POLICY CONTAINS SPECIFIC TERMS, DEFINITIONS, EXCLUSIONS AND CONDITIONS. IN CASE OF ANY CONFLICT YOUR POLICY LANGUAGE WILL CONTROL THE RESOLUTION OF ALL COVERAGE QUESTIONS. PLEASE READ YOUR POLICY CAREFULLY

If you have any questions regarding this notice, please contact your agent.

FOLD

**Policy Number:**

8294209

**Insured Name:**

MARTIN ENTERPRISES LLC

**Effective Date:**

06/26/2007

**Please fold on line. Company  
address must show through window.**

PEERLESS INSURANCE

PO BOX 8851

CAMP HILL PA 17011-8851



ST-ML-505 (01/07)

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## IMPORTANT NOTICE TO POLICYHOLDERS

With respect to insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
CUSTOM COMMERCIAL PROTECTOR GENERAL LIABILITY COVERAGE FORM  
COMMERCIAL PROTECTOR LIABILITY COVERAGE FORM

Your liability insurance is being renewed at this time with the addition of the Lead Exclusion. This results in some clarifications and reductions in coverage.

Following is a summary of the exclusion. NO COVERAGE IS PROVIDED BY THIS SUMMARY nor can it be construed to replace any provision in your policy. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

### LEAD EXCLUSION SUMMARY

**A. CLARIFYING CHANGES** – language has been added for the purpose of clarity but there is no change in coverage intent.

Coverage is not provided for:

- (1) Any injury or damage arising out of any premises or operations involving the mining, processing, manufacture, storage, installation, sale, distribution, removal, disposal, handling, inhalation, ingestion, absorption, use or existence of lead or lead contained in goods, products or materials.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order, or statutory or regulatory requirement that any insured or others in any way respond to, or assess the effects of lead or lead contained in goods, products or materials.
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of any response to or assessment of the effects of lead or lead contained in goods, products or materials.

**B. REDUCTIONS IN COVERAGE** – language has been added which has resulted in reductions in coverage.

Coverage is not provided for any injury or damage arising out of lead and lead contained in goods, products or materials if such injury or damage is included in the products or completed operations hazard.





## IMPORTANT POLICYHOLDER INFORMATION CONCERNING BILLING PRACTICES

**Dear Valued Policyholder:** This insert provides you with important information about our policy billing practices that may affect you. Please review it carefully and contact your agent if you have any questions.

**Premium Notice:** We will mail you a policy Premium Notice separately. The Premium Notice will provide you with specifics regarding your agent, the account and policy billed, the billing company, payment plan, policy number, transaction dates, description of transactions, charges/credits, policy amount balance, minimum amount, and payment due date. This insert explains fees that may apply to and be shown on your Premium Notice.

### **Available Premium Payment Plans:**

- **Annual Payment Plan:** When this plan applies, you have elected to pay the entire premium amount balance shown on your Premium Notice in full. No installment billing fee applies when the Annual Payment Plan applies.
- **Installment Payment Plan:** When this plan applies, you have elected to pay your policy premium in installments (e.g.: quarterly or monthly installments – Installment Payment Plans vary by state). As noted below, an installment fee may apply when the Installment Payment Plan applies.

The Premium Payment Plan that applies to your policy is shown on the top of your Premium Notice. It is also shown on your Policy Declarations. Please contact your agent if you want to change your Payment Plan election.

**Installment Payment Plan Fee:** If you elected to pay your premiums in installments using the Installment Premium Payment Plan, an installment billing fee applies to each installment bill. The installment billing charge will not apply, however, if you pay the entire balance due when you receive the bill for the first installment. Because the amount of the installment charge varies from state to state, please consult your Premium Notice for the actual fee that applies.

**Dishonored Payment Fee:** Your financial institution may refuse to honor the premium payment withdrawal request you submit to us due to insufficient funds in your account or for some other reason. If that is the case, and your premium payment withdrawal request is returned to us dishonored, a payment return fee will apply. Because the amount of the return fee varies from state to state, please consult your Premium Notice for the actual fee that applies.

**Late Payment Fee:** If we do not receive the minimum amount due on or before the date or time the payment is due, as indicated on your Premium Notice, you will receive a policy cancellation notice effective at a future date that will also reflect a late payment fee charge. Issuance of the cancellation notice due to non-payment of a scheduled installment(s) may result in the billing and collection of all or part of any outstanding premiums due for the policy period. Because the amount of the late fee varies from state to state, please consult your Premium Notice for the actual fee that applies. (Late Payment Fees are not applicable in some states.)

**Special Note:** Please note that some states do not permit the charging of certain fees. Therefore, if your state does not allow the charging of an Installment Payment Plan, Dishonored Payment or Late Payment Fee, the disallowed fee will not be charged and will not be included on your Premium Notice.

Once again, please contact your agent if you have any questions about the above billing practice information.

**Thank you for selecting us to service your insurance needs.**



## NOTICE TO POLICYHOLDERS COMMERCIAL GENERAL LIABILITY BROADENINGS, RESTRICTIONS AND CLARIFICATIONS OF COVERAGE

This notice has been prepared in conjunction with the implementation of changes to your policy. It contains a brief synopsis of the significant broadenings, restrictions and clarifications of coverage that were made in each policy form and endorsement. This notice does not reference every editorial change made in these forms and endorsements.

Please read your policy, and the endorsements attached to your policy, carefully.

### INTERNET LIABILITY

Internet Liability has been listed separately because the changes in these coverage forms result in broadening in coverage in certain respects and may, in certain states, result in a decrease in other respects. The impact of the changes in the revision are very difficult to quantify and may differ in different states.

### BROADENINGS OF COVERAGE

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**

- The definition of "coverage territory" in these coverage forms has been expanded to include personal and advertising injury offenses that take place via the Internet or other electronic means of communication, limited to some extent by the location where the suit is filed.

### RESTRICTIONS IN COVERAGE

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**  
**CG 00 09 10 01 Owners And Contractors Protective Liability Coverage Form**  
**CG 00 37 10 01 Products/Completed Operations Liability Coverage Form (Occurrence Version)**  
**CG 00 38 10 01 Products/Completed Operations Liability Coverage Form (Claims-Made Version)**  
**CG 00 39 10 01 Pollution Liability Coverage Form (Designated Sites)**  
**CG 00 40 10 01 Pollution Liability Limited Coverage Form (Designated Sites)**  
**CG 00 42 10 01 Underground Storage Tank Policy (Designated Tanks)**

- The definition of "property damage" in these coverage forms has been revised to expressly state that electronic data is not tangible property. In most states, the question of whether electronic data is tangible has not been finally decided by the courts in the context of the prior policy language. We do not consider electronic data to be tangible, and therefore, do not consider damage to such data to be "property damage." In jurisdictions where such data is ruled not to be tangible property under prior forms, this change amounts to a reinforcement of current intent. However, to some, this change may be considered a decrease in coverage, if such property is held to be tangible under prior forms. For that reason, out of caution, we are listing it as a decrease. Also, the description of electronic data was added.

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**

- The former Coverage B Personal and Advertising Injury Liability exclusion pertaining to an insured whose business is advertising, broadcasting, publishing or telecasting has been revised to include Internet type businesses such as web-site designers, and Internet search, access, content and service providers. However, a provision has been added to the exclusion which states that placing of frames, borders or links, or advertising for the named insured or others anywhere on the Internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

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ST-GL-410 (12/02)

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- An exclusion has been added to Coverage B for "personal and advertising injury" arising out of electronic chatrooms or bulletin boards.

#### **CLARIFICATIONS IN COVERAGE**

##### **CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**

##### **CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**

- These coverage forms have been clarified with respect to the definition of "personal and advertising injury" offenses such as slander, libel and invasion of privacy by specifically applying the word "publication" to include all types of publication, including those that are electronic.
- These coverage forms have been clarified with respect to the definition of "advertisement" to include notices that are published via the Internet and other forms of electronic communication. Also a statement was included in the definition specifying that the definition applies to advertising material only, when other material, as well as advertising, is put forth on a web-site.
- An exclusion has been added to Coverage B Personal and Advertising Injury Liability to specifically reference the intellectual property rights of copyright, patent, trademark or trade secret. However, there is an exception to this exclusion for personal and advertising injury offenses of copyright, trade dress or slogan in an "advertisement"
- An exclusion has been added to Coverage B pertaining personal and advertising injury arising out the use of the Internet to divert another's customers away from a web-site.

#### **OTHER CHANGES**

##### **BROADENINGS OF COVERAGE – COVERAGE FORMS**

##### **CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**

##### **CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**

- The Criminal Acts exclusion under Coverage B Personal and Advertising Injury Liability in these coverage forms is changed to permit coverage for the vicarious liability of other insureds who have no knowledge of a criminal act.
- Section II – Who Is An Insured in these coverage forms is broadened to include trusts as Named Insureds when designated in the policy Declarations.
- Section II – Who Is An Insured in these coverage forms is broadened to automatically include "volunteer workers" as insureds, but only while performing duties related to the conduct of the insured's business.

##### **BROADENINGS OF COVERAGE – ENDORSEMENTS**

##### **CG 04 36 10 01 – Limited Product Withdrawal Expense Endorsement**

- When attached to the Commercial General Liability or Products/Completed Operations Liability Coverage Forms, this new endorsement provides reimbursement for certain expenses incurred because of a product withdrawal due to a recall or tampering.

##### **CG 20 37 10 01 – Additional Insured – Owners, Lessees Or Contractors – Completed Operations**

- This endorsement provides a broadening of coverage by explicitly providing completed operations coverage for a specified additional insured.

**CG 22 62 10 01 Underground Resources And Equipment Coverage**

- This endorsement provides a broadening of coverage by adding an exception to the "damage to property" exclusion with respect to the care, custody or control provision. Coverage will be provided for such liability arising out of property damage included in the "underground resources hazard" for those oil or gas producing or servicing classes of risks otherwise excluded by CG 22 57 Exclusion – Underground Resources And Equipment Endorsement.

**CG 22 96 10 01 – Limited Exclusion – Personal And Advertising Injury – Lawyers**

- This endorsement provides coverage for personal and advertising injury liability for lawyers when they perform activities that fall outside of a lawyer's professional services.

**CG 22 97 10 01 Druggists – Broadened Coverage**

- The endorsement CG 22 97, is introduced for use in the states that permit broader pharmacists duties and responsibilities.

**CG 24 22 10 01 Amendment Of Coverage Territory – Worldwide Coverage**

- When this endorsement is attached to a policy, the coverage is provided for offenses and occurrences anywhere in the world, subject to the limitation on where the suit is filed.

**CG 24 23 10 01 Amendment Of Coverage Territory – Additional Scheduled Countries**

- When this endorsement is attached to a policy, coverage is broadened beyond the standard coverage territory (US including its territories and possessions, Canada and Puerto Rico), to include any other country that will be specified in the Schedule subject to the limitation on where the suit is filed.

**CG 24 24 10 01 Amendment Of Coverage Territory – Worldwide Coverage With Specified Exceptions**

- When this endorsement is attached to a policy, coverage is broadened to anywhere in the world, subject to the limitation on where the suit is filed, with the exception of those countries that will be listed in the Schedule.

**CG 27 15 10 01 Extended Reporting Period Endorsement For Employee Benefits Liability Coverage**

- This endorsement is available for purchase when canceling or non-renewing Employee Benefits Liability coverage and provides an extended period of five years during which a claim may be made by the insured.

**CG 28 05 10 01 Personal Injury Liability Endorsement**

- This endorsement provides broadening in coverage over its prior provisions, as there will now be coverage for vicarious liability of other insureds who have no knowledge of a criminal act.

**CG 31 15 10 01 Construction Project Management Protective Liability Coverage**

- When attached to an OCP policy, this new endorsement provides vicarious liability to the owner, contractor, architect or engineer or construction manager arising out of the work of the named insured contractor with an exception for professional services. Also, employees of the Named Insured will be covered for acts or omissions in connection with the general supervision of the contractor's operations.



**17-20 (12/02) School Amendatory Endorsement**  
**17-20NY (12/02) School Amendatory Endorsement**

- Paragraph G. Extension of Who Is An Insured has been revised to include the members of parent support groups and student groups.

**CLARIFICATIONS IN COVERAGE AND OTHER EDITORIAL REVISIONS – COVERAGE FORMS**

All General Liability coverage forms contain minor editorial revisions to provide for consistency among policies. In addition, these coverage forms have been revised to incorporate other various revisions in order to clarify coverage. Those latter changes to each individual coverage form are described below:

**CG 00 33 10 01 Liquor Liability Coverage Form (Occurrence Version)**  
**CG 00 34 10 01 Liquor Liability Coverage Form (Claims-Made Version)**  
**CG 00 37 10 01 Products/Completed Operations Liability Coverage Form (Occurrence Version)**  
**CG 00 38 10 01 Products/Completed Operations Liability Coverage Form (Claims-Made Version)**

- These coverage forms are revised to clarify that international waters or airspace are included under "coverage territory" but only if an "injury" occurs in the course of travel or transportation between any two of the following: US (including its territories and possessions), Puerto Rico and Canada.

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 09 10 01 Owners And Contractors Protective Liability Coverage Form**  
**CG 00 33 10 01 Liquor Liability Coverage Form (Occurrence Version)**  
**CG 00 37 10 01 Products/Completed Operations Liability Coverage Form (Occurrence Version)**

- These coverage forms have been revised to incorporate the "known injury or damage" provisions directly into the Insuring Agreement. Formerly, the Insuring Agreement in these coverage forms was amended by an endorsement to include the "known injury or damage" provisions.

**CG 00 35 10 01 Railroad Protective Liability Coverage Form**

- We are not incorporating the "known injury or damage" provisions into the Railroad Protective Liability Coverage Form because railroad employees are covered under the application of Federal Employers Liability Act.

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**  
**CG 00 09 10 01 Owners And Contractors Protective Liability Coverage Form**  
**CG 00 33 10 01 Liquor Liability Coverage Form (Occurrence Version)**  
**CG 00 34 10 01 Liquor Liability Coverage Form (Claims-Made Version)**  
**CG 00 35 10 01 Railroad Protective Liability Coverage Form**  
**CG 00 37 10 01 Products/Completed Operations Liability Coverage Form (Occurrence Version)**  
**CG 00 38 10 01 Products/Completed Operations Liability Coverage Form (Claims-Made Version)**  
**CG 00 39 10 01 Pollution Liability Coverage Form (Designated Sites)**  
**CG 00 40 10 01 Pollution Liability Limited Coverage Form (Designated Sites)**  
**CG 00 42 10 01 Underground Storage Tank Policy (Designated Sites)**

- The Legal Action Against Us Condition in these coverage forms has been revised to remove the phrase "obtained after an actual trial". This is because the definition of "suit" allows damages to be awarded through an arbitration or other alternative dispute resolution, so the judgment can be obtained without an actual trial.
- The Premium Audit Condition has been revised to state that the due date for the audit premium is the date shown as the due date on the bill. This is in compliance with a National Association of Insurance Commissioners (NAIC) requirement.

**CG 00 01 10 01 – Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 – Commercial General Liability Coverage Form (Claims-Made Version)**

- The Aircraft, Auto Or Watercraft exclusion under Coverage A in these coverage forms is being revised to clarify the intent of this exclusion to apply even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured.

**CG 00 01 10 01 Commercial General Liability Coverage Form (Occurrence Version)**  
**CG 00 02 10 01 Commercial General Liability Coverage Form (Claims-Made Version)**  
**CG 00 09 10 01 Owners And Contractors Protective Liability Coverage Form**  
**CG 00 37 10 01 Products/Completed Operations Liability Coverage Form (Occurrence Version)**  
**CG 00 38 10 01 Products/Completed Operations Liability Coverage Form (Claims-Made Version)**  
**CG 00 39 10 01 Pollution Liability Coverage Form (Designated Sites)**  
**CG 00 40 10 01 Pollution Liability Limited Coverage Form (Designated Sites)**  
**CG 00 42 10 01 Underground Storage Tank Policy (Designated Tanks)**

- The Damage To Property exclusion in these policies is revised to clarify that expenses incurred for repairs, etc. made on the insured's own property for any reason, including to avoid injury to a third party, will not be covered.

**CG 00 35 10 01 – Railroad Protective Liability Coverage Form**

- The Pollution exclusion in this coverage form is revised to clarify that coverage is not excluded for the insured whose liability arises out of the escape of fuels or lubricants from equipment used by contractors at their job site in connection with operations performed by such contractors.

**CLARIFICATIONS IN COVERAGE AND OTHER EDITORIAL REVISIONS – ENDORSEMENTS**

**CG 20 10 10 01 Additional Insured – Owners Lessees Or Contractors – Scheduled Person Or Organization**  
**CG 20 33 10 01 Additional Insured – Owners Lessees Or Contractors – Automatic Status When Required In Construction Agreement With You**

- We are revising these endorsements to clarify that completed operations coverage for an additional insured is excluded.

**CG 20 22 10 01 Additional Insured – Church Members, Officers And Volunteer Workers**

- We are revising this endorsement to delete the reference to volunteer workers since the provisions relating to volunteer workers have been incorporated into the Commercial General Liability Coverage Form. This doesn't decrease coverage because of the fact that, in the prior edition of the coverage form, coverage for volunteer workers was excluded.

**CG 20 35 Additional Insured – Grantor Of Licenses – Automatic Status When Required By Licensor**  
**CG 20 36 Additional Insured – Grantor Of Licenses**

- These new endorsements will add a person or organization who grants licenses as an additional insured to the policy of a person or organization who makes and distributes products of that person or organization. CG 20 35 provides automatic status as an additional insured of grantors of licenses. CG 20 36 requires that the grantor of the license be named in the Schedule of the endorsement.

**CG 21 37 10 01 Exclusion – Employees And Volunteer Workers As Insured (formerly Exclusion – Employees As Insureds)**

- We are revising this endorsement to clarify that volunteer workers as well as employees are excluded as insureds.



**CG 21 37 10 01 Exclusion – Employees And Volunteer Workers As Insureds**  
**CG 22 71 10 01 Colleges Or Schools (Limited Form)**  
**CG 22 72 10 01 Colleges Or Schools**

- The Aircraft, Auto Or Watercraft exclusion in these endorsements is being revised to clarify that this exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured.

**17-20 (12/02) School Amendatory Endorsement**  
**17-20NY (12/02) School Amendatory Endorsement**

- Paragraph C. School Broadcasting and Publication – Personal and Advertising Injury Liability Extension has been revised as follows:
  - Editorial changes have been made to be consistent with format changes under Coverage B. exclusions in the Commercial General Liability Coverage Form
  - The definition of "advertisement" has been clarified to include notices that are published via the Internet and other forms of electronic communication. Also a statement is included in the definition specifying that the definition applies to advertising material only, when other material, as well as advertising, is put forth on a web-site. However, with respect to the Internet, advertisement is limited to the named insured's goods, products or services, and that part of the web-site that is about the named insured's goods, products or services.
- Paragraph E. Transportation of Students Limitation has been revised to clarify the intent of the Aircraft, Auto Or Watercraft exclusion to apply even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured.
- Paragraph G. Extension of Who Is an Insured has been revised to:
  - Delete reference to "volunteer workers" because "volunteer workers" are now included as insureds under the Commercial General Liability Coverage Form.
  - Expressly state that a substitute teacher is not a temporary worker.
- Paragraph I. Additional Insureds – By Contract, Agreement Or Permit has been revised as follows:
  - To further emphasize that the scope of coverage for the additional insured is confined to ongoing operations:
    - An entity's status as an insured under this endorsement ends when the named insured's operations for that entity are completed.
    - An exclusion has been added to expressly state what is already the case, that completed operations coverage is not provided to an additional insured.
  - The professional services exclusion has been revised to specifically reference architectural, engineering and surveying services.
  - An exclusion has been added to expressly state that coverage is not provided for the additional insured's sole negligence.
  - An exclusion has been added to explicitly state that this endorsement provision does not apply to an additional insured covered under a separate additional insured endorsement that is made a part of the policy.
- Former Medical Payments Extension – Volunteer Workers has been deleted because provisions relating to "volunteer workers" have been incorporated into the Commercial General Liability Coverage Form. See also BROADENINGS OF COVERAGE – COVERAGE FORMS in this notice.
- Paragraph L. Property Damage Liability – Elevators has been revised to explicitly state that coverage applies if the property damage results from the use of elevators.
- Paragraph M. Damage By Fire, Lightning, Explosion, Smoke or Leakage has been revised to include a provision which clarifies that the term fire, as used in the definition of insured contract, includes lightning, explosion, smoke or leakage from automatic protection systems.

**17-88 (12/02) School Amendatory Endorsement (Basic Form)**

- Paragraph C. Transportation of Students Limitation has been revised to clarify the intent of the Aircraft, Auto Or Watercraft exclusion to apply even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured.

- Paragraph E. Extension of Who Is an Insured has been revised to:
  - Delete reference to "volunteer workers" because "volunteer workers" are now included as insureds under the Commercial General Liability Coverage Form.
  - Expressly state that a substitute teacher is not a temporary worker.
- Paragraph F. Additional Insureds – By Contract, Agreement Or Permit has been revised as follows:
  - To further emphasize that the scope of coverage for the additional insured is confined to ongoing operations:
    - An entity's status as an insured under this endorsement ends when the named insured's operations for that entity are completed.
    - An exclusion has been added to expressly state what is already the case, that completed operations coverage is not provided to an additional insured.
  - The professional services exclusion has been revised to specifically reference architectural, engineering and surveying services.
  - An exclusion has been added to expressly state that coverage is not provided for the additional insured's sole negligence.
  - An exclusion has been added to explicitly state that this endorsement provision does not apply to an additional insured covered under a separate additional insured endorsement that is made a part of the policy.
- Former Medical Payments Extension – Volunteer Workers has been deleted because provisions relating to "volunteer workers" have been incorporated into the Commercial General Liability Coverage Form. See also BROADENINGS OF COVERAGE – COVERAGE FORMS in this notice.
- Paragraph I. Property Damage Liability – Elevators has been revised to explicitly state that coverage applies if the property damage results from the use of elevators.
- Paragraph J. Damage By Fire, Lightning, Explosion, Smoke or Leakage has been revised to include a provision which clarifies that the term fire, as used in the definition of insured contract, includes lightning, explosion, smoke or leakage from automatic protection systems.

#### **22-45 (12/02) Commercial General Liability Extension Endorsement**

- Paragraph E. Property Damage Liability – Elevators has been revised to explicitly state that coverage applies if the property damage results from the use of elevators.
- Paragraph F. Damage By Fire, Lightning, Explosion, Smoke or Leakage has been revised to include a provision which clarifies that the term fire, as used in the definition of insured contract, includes lightning, explosion, smoke or leakage from automatic protection systems.
- Paragraph I. Additional Insureds – By Contract, Agreement or Permit has been revised as follows:
  - To further emphasize that the scope of coverage for the additional insured is confined to ongoing operations:
    - An entity's status as an insured under this endorsement ends when the named insured's operations for that entity are completed.
    - An exclusion has been added to expressly state what is already the case, that completed operations coverage is not provided to an additional insured.
  - The professional services exclusion has been revised to specifically reference architectural, engineering and surveying services.
  - An exclusion has been added to expressly state that coverage is not provided for the additional insured's sole negligence.
  - An exclusion has been added to explicitly state that this endorsement provision does not apply to an additional insured covered under a separate additional insured endorsement that is made a part of the policy.
- Paragraph J. Additional Insured – Vendors has been revised to expressly state that coverage is not provided for the additional insured's sole negligence.

#### **22-60 (12/02) Religious Organization – Medical Payments – Athletics**

- The title of this endorsement has been changed to reference Religious Organization.



22-64 (12/02) Contractors Limited Pollution Liability Coverage – Work Sites  
 22-64IL (12/02) Contractors Limited Pollution Liability Coverage – Work Sites  
 22-64NY (12/02) Contractors Limited Pollution Liability Coverage – Work Sites  
 22-64SC (12/02) Contractors Limited Pollution Liability Coverage – Work Sites

- The Intentional Injury or Damage exclusion has been strengthened to apply even if the injury or damage is of a different kind, quality or degree than the insured expected or intended, or the injury or damage is sustained by a different entity than the insured expected or intended.
- The endorsement provisions pertaining to the Limits of Insurance have been reformatted to improve readability. The Pollution Liability Aggregate Limit and the Each Pollution Incident Limit provisions now precede the endorsement provisions which revise the General Aggregate Limit contained in the Commercial General Liability Coverage Form.

17-20 (12/02) School Amendatory Endorsement  
 17-20NY (12/02) School Amendatory Endorsement  
 17-22 (12/02) Exclusion – Lead Liability  
 17-88 (12/02) School Amendatory Endorsement (Basic Form)  
 17-98 (12/02) Exclusion – Asbestos Liability  
 22-44 (12/02) Amendatory Endorsement  
 22-45 (12/02) Commercial General Liability Extension Endorsement  
 22-59 (12/02) Voluntary Property Damage  
 22-61 (12/02) Religious Organization – Property Damage Coverage Extension  
 22-67 (12/02) Additional Insured – Club Members With Medical Payments Amendment  
 22-68 (12/02) Property Damage Amendment – Janitorial Services  
 22-73 (12/02) Contractors Property Damage Extension Endorsement

- Editorial changes have been made throughout these endorsements to achieve consistency among policy forms.

#### **RESTRICTIONS IN COVERAGE – COVERAGE FORMS**

##### **CG 00 42 10 01 Underground Storage Tank Policy Designated Tanks**

- This policy is revised to exclude coverage for corrective action costs due to willful noncompliance with any statute, law, or ordinance for corrective action measures in the event of an underground storage tank incident.

#### **RESTRICTIONS IN COVERAGE – ENDORSEMENTS**

##### **CG 21 66 10 01 Exclusion – Volunteer Workers**

- When this endorsement is attached to a CGL, coverage is restricted by excluding volunteer workers as insureds from a CGL policy.

##### **CG 22 69 10 01 Druggists**

- We are revising CG 22 69 to clarify that the types of pharmacist services that are not within the traditional duties of pharmacists like writing prescriptions, administering drugs and vaccinations, and performing blood tests are excluded.

##### **CG 22 94 10 01 Exclusion – Damage To Work Performed By Subcontractors On Your Behalf**

##### **CG 22 95 10 01 Exclusion – Damage To Work Performed By Subcontractors On Your Behalf – Designated Sites Or Operations**

- When these new endorsements are attached to a CGL, coverage is restricted by excluding defects in "your work" from a CGL policy, even for work performed by a subcontractor.



**CG 22 98 10 01 Exclusion – Internet Service Providers And Internet Access Providers Errors And Omissions****CG 22 99 10 01 Professional Liability Exclusion – Web-Site Designers**

- These endorsements are introduced to exclude coverage for injury or damage arising out of the rendering or failure to render Internet service, Internet access, web-site designer or consultant services, as these professional services are not contemplated in the CGL coverage form.

**CG 28 12 10 01 Pesticide Or Herbicide Applicator Coverage**

- This endorsement is being revised to apply the exception to the exclusion to only paragraph 1(d) of exclusion j., so that the scope of coverage for pesticide or herbicide applicator should be the same under OCP policy as it is under the CGL policy.

**22-59 (12/02) Voluntary Property Damage****22-61 (12/02) Religious Organization – Property Damage Coverage Extension****22-64 (12/02) Contractors Limited Pollution Liability Coverage – Work Sites****22-64IL (12/02) Contractors Limited Pollution Liability Coverage – Work Sites****22-64NY (12/02) Contractors Limited Pollution Liability Coverage – Work Sites****22-64SC (12/02) Contractors Limited Pollution Liability Coverage – Work Sites**

- The definition of "property damage" has been revised to expressly state that electronic data is not tangible property. This change is a reinforcement of current coverage intent. However, in some jurisdictions, this change may be a decrease in coverage if such property has been held to be tangible.

**22-45 (12/02) Commercial General Liability Extension Endorsement**

- The endorsement Schedule has been revised to allow the deletion of one or more of the following endorsement provisions:  
 Provision C. PROPERTY DAMAGE – BORROWED EQUIPMENT  
 Provision D. PROPERTY DAMAGE – CUSTOMERS' GOODS  
 Provision G. MEDICAL PAYMENTS EXTENSION  
 Provision I. ADDITIONAL INSURED – BY CONTRACT, AGREEMENT OR PERMIT  
 Provision J. ADDITIONAL INSURED – VENDORS  
 Provision K. BROAD FORM NAMED INSURED  
 Provision L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES  
 Provision M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

**EMPLOYEE BENEFITS LIABILITY COVERAGE**

If your renewal contains **Employee Benefits Liability Coverage** endorsement **CG 04 35** and your expiring policy contained **Employee Benefits Liability Coverage Form 26-2**, then the following changes apply to your insurance:

**BROADENINGS OF COVERAGE**

- The former Discovery Period provisions have been replaced by the Extended Reporting Period provisions. If your policy is terminated, an Extended Reporting Period is available by endorsement for an extra charge and lasts for five years
- The definition of "employee benefits program" has been revised to specifically include dental, vision and hearing plans, flexible spending accounts, employee stock ownership plans, leave of absence programs, tuition assistance programs, and transportation and health club subsidies.

**CLARIFICATIONS IN COVERAGE AND OTHER EDITORIAL REVISIONS**

- Editorial changes have been made throughout to achieve consistency among policy forms.
- Your Employee Benefits Liability Coverage is now provided by an endorsement that modifies the Commercial General Liability Coverage Part, and is no longer provided by a separate and distinct coverage part. Any pertinent information such as limits of insurance, Retroactive Date and premium will be displayed either in the Schedule of the endorsement or the Declarations for the Commercial General Liability Coverage Part.
- Investigation, settlement and defense provisions are no longer addressed separately and have been incorporated into the Insuring Agreement.
- The Insuring Agreement has been revised so that a claim will be deemed to be made at the earlier of the following times:
  - When notice of claim is received and recorded by any insured or by us, whichever comes first; or
  - When we make settlement.
- The Supplementary Payments provisions contained in the Commercial General Liability Coverage Form apply with respect to Employee Benefits Liability Coverage except for the cost of bail bonds and the provisions related to defense of the insured's indemnitees.
- "Bodily injury", "property damage" and "personal and advertising injury", as defined in the Commercial General Liability Coverage Form, are excluded from Employee Benefits Liability Coverage.
- An Employment-Related Practices exclusion has been added to reinforce what is already the case, that insurance does not apply with respect to wrongful termination of employment, discrimination, or other employment-related practices.
- The Dishonest, Fraudulent, Criminal or Malicious Act exclusion has been revised to emphasize coverage intent to cover only negligent acts and to expressly preclude coverage for willful or reckless violation of any statute.
- A Basic Discovery Period no longer applies. However, a "claim", because of an act, error or omission committed on or after the Retroactive Date and before the end of the policy period, that is received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the claim.
- The Inadequacy Of Performance Of Investment /Advice Given With Respect To Participation exclusion replaces a portion of the former Plan Failure exclusion and expressly excludes errors in providing information on past performance of investment vehicles.
- A Taxes, Fines Or Penalties exclusion has been added. Formerly, taxes, fines or penalties were precluded from coverage by virtue of the definition of "loss".
- The Who Is An Insured provisions contained in the Commercial General Liability Coverage Form apply except as amended by the Employee Benefits Liability Coverage endorsement. Note that:
  - Volunteer workers and real estate managers are not insureds.
  - Your employees are insureds only if authorized to administer your "employee benefit programs".
  - Any person or organization having proper temporary authorization to administer your "employee benefit program", if you die, are insureds, but only until your legal representative is appointed.
  - Your legal representative is an insured, if you die, but only with respect to his or her duties as such.
  - Coverage under the newly acquired or formed organization provisions does not apply to any act, error or omission that was committed before you acquired or formed the organization.
  - The mobile equipment provisions contained in the Commercial General Liability Coverage Form do not apply

- The Conditions contained in the Commercial General Liability Coverage Form apply except as amended by the Employee Benefits Liability Coverage endorsement.
- The Definitions contained in the Commercial General Liability Coverage Form apply except as amended by the Employee Benefits Liability Coverage endorsement.
  - A defined term "claim" has been added to explain that we mean a demand or suit for damages as a result of an act, error or omission. Such a claim must be made by an employee or an employee's dependents and beneficiaries.
  - A defined term, "cafeteria plans" has been added and is used in the definition of "employee benefit program".
  - A defined term, "employee" has been added which means a person actively employed, formerly employed, on leave of absence or disabled, or retired. Leased workers are included, but temporary workers are not included.
  - Former defined terms, "loss", "wrongful act" and "policy period" no longer apply.

#### **RESTRICTIONS IN COVERAGE**

- The Inadequacy Of Performance Of Investment /Advice Given With Respect To Participation exclusion replaces the former Participation Advice exclusion and applies to advice given with respect to participation or nonparticipation in any employee benefit plan.
- An Each Employee Limit applies in lieu of the former Each Loss Limit. This is the most we will pay for all damages sustained by one employee including damages sustained by the employee's dependents and beneficiaries. The deductible amount also applies to all damages sustained by one employee including damages sustained by the employee's dependents and beneficiaries.
- The definition of "administration" does not include interpreting the "employee benefits program".





## **NOTICE TO POLICYHOLDERS EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This Notice does not form a part of your insurance contract. No coverage is provided by this Notice, nor can it be construed to replace any provisions of your policy (including its endorsements). If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

Carefully read your policy, including the endorsements attached to your policy.

This Notice provides information concerning the following new endorsement, which applies to your new or renewal policy being issued by us:

### **Exclusion Of Loss Due To Virus Or Bacteria Endorsement CP 01 40 (07/06)**

This endorsement excludes coverage for loss or damage caused by or resulting from virus, bacterium or other microorganism. While these substances are "pollutants" and therefore subject to certain exclusions and limitations on coverage in your previous or expiring policy, your new or renewal policy excludes coverage for all loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. This exclusion applies to all coverages provided by your Commercial Property insurance, including (if any) property damage and business income coverage.





## NOTICE TO POLICYHOLDERS COMMERCIAL GENERAL LIABILITY REMOVAL OF AMENDATORY ENDORSEMENT

Your policy has been renewed without the Amendatory Endorsement 22-44. Following is a summary of the changes to your coverage. NO COVERAGE IS PROVIDED BY THIS SUMMARY nor can it be construed to replace any provision in your policy. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

Your policy contains one of the following Coverage Forms:

- CG 00 01 Commercial General Liability Coverage Form**
- CG 00 02 Commercial General Liability Coverage Form (Claims-Made Coverage)**
- CG 00 09 Owners and Contractors Protective Liability Coverage Form**
- CG 00 37 Products/Completed Operations Liability Coverage Form**
- CG 00 38 Products/Completed Operations Liability Coverage Form (Claims-Made Coverage)**
- 23-3 CUSTOM COMMERCIAL PROTECTOR® General Liability Coverage Form**

The former Amendatory Endorsement 22-44 modified the above Coverage Forms so that certain Contractual Liability Exclusion provisions and Supplementary Payments provisions related to the defense of the insured's indemnitees did not apply. The removal of Amendatory Endorsement 22-44 from your policy means that these provisions now apply which may result in the following restrictions of coverage:

- The Contractual Liability Exclusion in these coverage forms includes an exception for attorneys fees and litigation expenses incurred by or for a party other than the insured when the insured has specifically assumed the defense of that party, and the related attorneys fees and litigation expenses, in an "insured contract". However, such attorneys fees and litigation expenses will be paid as damages under bodily injury and property damage liability coverage, and are subject to the Limits of Insurance.

*For more details, refer to provision b.(2) under:*

- *paragraph 2. Exclusions of Coverage A (Section I), if your policy contains CG 00 01, CG 00 02 or 23-3*
- *paragraph 2. Exclusions (Section I), if your policy contains CG 00 09, CG 00 37 or CG 00 38*
- The Supplementary Payments provisions in these coverage forms provide for defense of the insured's indemnitee and the payment of the indemnitee's defense expenses as Supplementary Payments, if we defend an insured against a "suit" and the indemnitee of the insured is also named as a party to the "suit". However, certain specific conditions must be met.

*For more details, refer to Supplementary Payments (Section I)*



## **TIMELY NOTICE**

### **Workers' Compensation and Liability Injury Claims Reporting**

**Timely reporting of Workers' Compensation and other injury claims has been proven to lower claim costs positively impacting loss experience modifications.**

That's why Peerless Insurance offers ANYTIME™ Claim Reporting services 24 hours a day to policyholders. Call 1-800-522-7152 to report all Workers' Compensation and injury claims. When reporting a claim through the ANYTIME™ Claim Reporting service, simply provide our representative with the following information.

- Policy number
- Fax number
- Name, Address and Federal ID
- Wage information (if the loss involves loss time from work)
- Claim information (date, time and description of loss)
  - Employee information (name, address, social security number, DOB, marital status, and dependent)
  - Injury information (injury type and medical facility initiating treatment)

**Remember, Timely Notice of claims can:**

- Avoid state imposed late reporting penalties
- Reduce litigation activities and costs
- Enhance medical care process
- Improve employee/employer relations
- Mitigate lost time and speed recovery

**Please report all Workers' Compensation  
and injury losses within 24 hours of the loss.**



**1-800-522-7152**



## IMPORTANT NOTICE TO POLICYHOLDERS

With respect to insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
COMMERCIAL PROTECTOR® LIABILITY COVERAGE FORM

Your liability insurance is being renewed at this time with the addition of the Asbestos Exclusion. This results in some clarifications and reductions in coverage. Following is a summary of the major changes. NO COVERAGE IS PROVIDED BY THIS SUMMARY nor can it be construed to replace any provision in your policy. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

### ASBESTOS EXCLUSION SUMMARY

**A. CLARIFYING CHANGES** – language has been added for the purpose of clarity but there is no change in coverage intent.

Coverage is not provided for:

1. Any Injury or damage arising out of any premises or operations involving the manufacture, storage, processing, mining, use, sales, installation, removal, disposal, distribution, handling, inhalation, ingestion, absorption or existence of, exposure to, or contact with asbestos, asbestos contained in goods, products or materials, asbestos fibers or asbestos dust.
2. Any loss, cost or expense arising out of any:
  - a. Request, demand, order, or statutory or regulatory requirement that any insured or others in any way respond to or assess the effects of asbestos, asbestos fibers or asbestos dust, or asbestos contained in goods, products or materials.
  - b. Claim or suit by or on behalf of a governmental authority for damages because of any response to or assessment of the effects of asbestos, asbestos fibers or asbestos dust, or asbestos contained in goods, products or materials.

**B. REDUCTIONS IN COVERAGE** – language has been added which has resulted in reductions in coverage.

Coverage is not provided for any injury or damage arising out of asbestos, asbestos fibers or asbestos dust, and asbestos contained in goods, products or materials if such injury or damage is included in the products or completed operations hazard.





## **IMPORTANT NOTICE TO COMMERCIAL GENERAL LIABILITY COVERAGE FORM POLICYHOLDERS**

Subcontractors who work for you present an exposure to your insurance program if they do not have adequate insurance. When a loss occurs you will be expected to pay claims if the subcontractor is uninsured. If the subcontractor has inadequate limits of insurance you may have to pay a loss because the subcontractor did not have enough insurance in force. This can happen even if the loss is not your fault.

Because of the loss potential inadequately insured subcontractors pose, you should be sure to obtain a certificate of insurance from all subcontractors. Each certificate of insurance should:

- Show that General Liability coverage is in effect for the entire period of the job.
- State that the limits of insurance for General Liability coverage should equal (or exceed) your limits or be \$300,000 on a combined single limits or occurrence aggregate basis, whichever is less.
- Provide you with 30 days notice of cancellation or non-renewal of the General Liability coverage.
- Show that the General Liability coverages certified are the same as those provided by your policy.

All certificates of insurance should be retained with other important insurance records. At the end of the policy term our field auditor will review your certificate records and call for the appropriate charge when certificates are missing. An appropriate charge may also be made if the subcontractor's limits are not at least equal to your limits or \$300,000 on a combined single limits or occurrence/aggregate basis.

Your agent will be glad to help you design your insurance program so you can avoid extra costs due to inadequately insured subcontractors.



**RENEWAL****EFFECTIVE DATE: 06/26/2007**

<b>Policy Number:</b> CBP 8294209	<b>Prior Policy:</b> GL8172335
<b>Billing Type:</b> DIRECT BILL	
<b>Coverage Is Provided In</b> PEERLESS INSURANCE COMPANY - A STOCK COMPANY	
<b>Named Insured and Mailing Address:</b> MARTIN ENTERPRISES LLC 831 1/2 E ORANGE ST LANCASTER PA 17602	<b>Agent:</b> GOOD'S INSURANCE AGENCY INC 352 EAST MAIN STREET SUITE 200 LEOLA PA 17540  <b>Agent Code:</b> 3710525 <b>Agent Phone:</b> (717)-661-6100

**COMMON POLICY DECLARATIONS**

In return for the payment of premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy.

**POLICY PERIOD:** From : 06/26/2007 To: 06/26/2008 at 12:01 AM Standard Time at your mailing address shown above.

**FORM OF BUSINESS:** LIMITED LIABILITY COMPANY

**BUSINESS DESCRIPTION:** OFFICE FURNITURE INSTALLATION

This policy consists of the following coverage parts for which a premium is indicated. This premium may be subject to adjustment.

	PREMIUM
Commercial Property Coverage Part	\$ 344.00
Commercial General Liability Coverage Part	INCLUDED
Total Premium for all Liability Coverage Parts	\$ 525.00
Terrorism Risk Insurance Act of 2002 and 2005 Coverage	\$ 8.00
<b>Total Policy Premium</b>	<b>\$ 877.00</b>

**FORMS AND ENDORSEMENTS**

**Forms and Endorsements made a part of this policy at time of issue:**

Applicable Forms and Endorsements are omitted if shown in specific Coverage Part/Coverage Form Declarations

Form Number	Description
IL0003	- 0702 CALCULATION OF PREMIUM
IL0017	- 1198 COMMON POLICY CONDITIONS
IL0166	- 0702 PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
IL0172	- 0702 PENNSYLVANIA CHANGES
IL0246	- 0702 PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL

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**INSURED COPY**

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**COMMON POLICY DECLARATIONS (continued)**

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**FORMS AND ENDORSEMENTS****Forms and Endorsements made a part of this policy at time of issue:**

Applicable Forms and Endorsements are omitted if shown in specific Coverage Part/Coverage Form Declarations

Form Number	Description
IL0910	- 0702 PENNSYLVANIA NOTICE
IL0959	- 1102 LIMITED EXCLUSION OF ACTS OF TERRORISM
CG2171	- 1202 LIMITED TERRORISM EXCLUSION
CG2176	- 1102 EXCL OF PUNITIVE DAMAGES RELATED TO A CERTIFIED ACT
IL0021	- 0702 NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)

Countersigned: By \_\_\_\_\_  
Authorized Representative Date

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Includes copyrighted material of Insurance Services Office, Inc. with its permission. Copyright, Insurance Services Office, Inc. 1982,1983, 1984, 1985.

**Date Issued: 06/21/2007**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – VIOLATION OF STATUTES THAT GOVERN  
E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF  
SENDING MATERIAL OR INFORMATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PENNSYLVANIA CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
FARM UMBRELLA LIABILITY POLICY  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**A. The Cancellation Common Policy Condition is replaced by the following:**

**CANCELLATION**

**1. The first Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.**

**2. Cancellation Of Policies In Effect For Less Than 60 Days**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

**3. Cancellation Of Policies In Effect For 60 Days Or More**

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.
- b. You have failed to pay a premium when due, whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.
- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.



4. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
  5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata and will be returned within 10 business days after the effective date of cancellation. If the first Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.
  7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.
- B. The following are added and supersede any provisions to the contrary:

**1. Nonrenewal**

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration date of the policy.

**2. Increase Of Premium**

If we increase your renewal premium, we will mail or deliver to the first Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the first Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

## PENNSYLVANIA NOTICE

An Insurance Company, its agents, employees, or service contractors acting on its behalf, may provide services to reduce the likelihood of injury, death or loss. These services may include any of the following or related services incident to the application for, issuance, renewal or continuation of, a policy of insurance:

1. Surveys;
2. Consultation or advice; or
3. Inspections.

The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, is not liable for damages from injury, death or loss occurring as a result of any act or omission by any person in the furnishing of or the failure to furnish these services.

The Act does not apply:

1. If the injury, death or loss occurred during the actual performance of the services and was caused by the negligence of the Insurance Company, its agents, employees or service contractors;
2. To consultation services required to be performed under a written service contract not related to a policy of insurance; or
3. If any acts or omissions of the Insurance Company, its agents, employees or service contractors are judicially determined to constitute a crime, actual malice, or gross negligence.

### Instruction to Policy Writers

Attach the Pennsylvania Notice to all new and renewal certificates insuring risks located in Pennsylvania.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PENNSYLVANIA CHANGES – ACTUAL CASH VALUE**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

The following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.





**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PENNSYLVANIA CHANGES**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
FARM COVERAGE PART

**A. For insurance provided under the:**

Boiler and Machinery Coverage Part  
Capital Assets Program (Output Policy) Coverage Part  
Commercial Inland Marine Coverage Part  
Commercial Crime Coverage Part  
Commercial Property Coverage Part

The **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** Common Policy Condition is replaced by the following:

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

If you die, this Coverage Part will remain in effect as provided in 1. or 2. below, whichever is later:

1. For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
2. Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

Coverage during the period of time after your death is subject to all provisions of this policy including payment of any premium due for the policy period shown in the Declarations and any extension of that period.

**B. For insurance provided under the:**

Capital Assets Program (Output Policy) Coverage Part  
Commercial Inland Marine Coverage Part  
Commercial Property Coverage Part  
Farm Coverage Part

The following is added to the **LOSS PAYMENT** Loss Condition and supersedes any provision to the contrary:

**NOTICE OF ACCEPTANCE OR DENIAL OF CLAIM**

1. Except as provided in 3. below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:
  - a. Accept your claim;
  - b. Deny your claim; or
  - c. Need more time to determine whether your claim should be accepted or denied.

If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.

If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason why more time is required.

2. If we have not completed our investigation, we will notify you again in writing, within 30 days after the date of the initial notice as provided in 1.c. above, and thereafter every 45 days. The written notice will state why more time is needed to investigate your claim and when you may expect us to reach a decision on your claim.
3. The notice procedures in 1. and 2. above do not apply if we have a reasonable basis, supported by specific information, to suspect that an insured has fraudulently caused or contributed to the loss by arson or other illegal activity. Under such circumstances, we will notify you of the disposition of your claim within a period of time reasonable to allow full investigation of the claim, after we receive a properly executed proof of loss.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**LIMITED EXCLUSION OF ACTS OF TERRORISM  
(OTHER THAN CERTIFIED ACTS OF TERRORISM);  
CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EMPLOYEE THEFT AND FORGERY POLICY  
FARM COVERAGE PART  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY  
KIDNAP/RANSOM AND EXTORTION COVERAGE FORM  
KIDNAP/RANSOM AND EXTORTION POLICY  
STANDARD PROPERTY POLICY

**A.** The following definitions are added with respect to the provisions of this endorsement:

1. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The criteria contained in that Act for a "certified act of terrorism" include the following:
  - a. The act resulted in aggregate losses in excess of \$5 million; and
  - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
2. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. However, "other act of terrorism" does not include an act which meets the criteria set forth in Paragraph b. of the definition of "certified act of terrorism", when such act resulted in aggregate losses of \$5 million or less.

**B.** The following exclusion is added:

**Exclusion Of An "Other Act Of Terrorism"**

We will not pay for loss or damage caused directly or indirectly by an "other act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to such act:

1. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
2. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or



3. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "other acts of terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident.

With respect to this item **B.3.**, the immediately preceding paragraph describes the threshold used to measure the magnitude of an "other act of terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an "other act of terrorism", there is no coverage under this Coverage Part or Policy.

**C. Cap On Certified Terrorism Losses**

With respect to any one or more "certified acts of terrorism" under the federal Terrorism Risk Insurance Act of 2002, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

**D. Application Of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CALCULATION OF PREMIUM**

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.



## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.







RENEWAL

Forming a part of

Policy Number: CBP 8294209	
Coverage Is Provided In PEERLESS INSURANCE COMPANY - A STOCK COMPANY	
Named Insured: MARTIN ENTERPRISES LLC	Agent: GOOD'S INSURANCE AGENCY INC
Agent Code: 3710525      Agent Phone: (717)-661-6100	

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

## DESCRIPTION OF PREMISES

Prem. No.	Bldg. No.	Location Occupancy, Construction/Fire Protection
1	1	831 1/2 E ORANGE ST LANCASTER LANCASTER PA 17602 STORAGE-FURNITURE FRAME

## COVERAGES PROVIDED:

Insurance at the described premises applies only for coverages for which a limit of insurance is shown or for which an entry is made. (The Coinsurance column reflects Coinsurance %, Extra Expense %, Limits on Loss Payment or Value Reporting Symbol.)

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Causes of Loss Form	Coinsurance
1	1	YOUR BUSINESS PERSONAL PROPERTY	\$ 10,000	SPECIAL	90%

## OPTIONAL COVERAGES:

Prem. No.	Bldg. No.	Coverage	Agreed Value Amount Expiration Date	Replacement Cost	Inflation Guard
1	1	YOUR BUSINESS PERSONAL PROPERTY		INCLUDED	

\* Replacement cost for Your Business Personal Property also applies to Stock if an asterisk (\*) is present.

DEDUCTIBLE: \$ 500

MORTGAGE HOLDERS: NONE

## FORMS AND ENDORSEMENTS

Forms and Endorsements applying to this Coverage Part and made part of this policy:

Form Number	Description
21-41 - 0706	PENNSYLVANIA CHANGES
21-76 - 0906	SERVICE PROVIDERS PROPERTY EXTENSION PLUS ENDORSEMENT
CF175 - 0186	QUICK REFERENCE-COMMERCIAL PROPERTY COVERAGE PART
CP0010 - 0402	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CP0090 - 0788	COMMERCIAL PROPERTY CONDITIONS

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## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS (continued)

## FORMS AND ENDORSEMENTS

Forms and Endorsements applying to this Coverage Part and made part of this policy:

Form Number		Description
CP0121	- 0695	STANDARD FIRE POLICY PROVISIONS
CP0140	- 0706	EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA
CP1030	- 0402	CAUSES OF LOSS - SPECIAL FORM
IL0166	- 0702	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE
IL0172	- 0702	PENNSYLVANIA CHANGES
IL0246	- 0702	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL
IL0910	- 0702	PENNSYLVANIA NOTICE

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Date Issued: 06/21/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **SERVICE PROVIDERS PROPERTY EXTENSION PLUS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS – SPECIAL FORM**

The following is a summary of increased limits of insurance and additional coverages provided by this endorsement. This endorsement is subject to the provisions of your policy which means that it is subject to all limitations and conditions applicable to this Coverage Part, Coverage Form or Causes of Loss Form unless specifically deleted, replaced, or modified herein. This endorsement is applicable only to those premises described in the Declarations.

**Coverage for loss of Business Income or Extra Expense, whether provided by this endorsement or elsewhere, does not apply if a loss is covered only as a result of this endorsement.**

**If coverage is provided elsewhere in this policy for the same loss or damage as the coverage provided under this endorsement, the coverage under this endorsement will apply excess over that other coverage unless otherwise stated. We will not pay more than the actual amount of the covered loss or damage.**

<u>Coverage Description</u>	<u>Limit of Insurance</u>
Broadened Premises	Included
Additional Covered Property	Included
Preservation of Property	60 days
Inventory and Appraisal	\$ 5,000
Employee Dishonesty	\$ 50,000
Money Orders and Counterfeit Money	\$ 2,500
Leasehold Interest	\$ 25,000
Contract Penalty Clause	\$ 5,000
Forgery or Alteration	\$ 25,000
Real Property of Others Required by Contract	\$ 25,000
Electronic Data	\$ 15,000
Foundations	Included
Debris Removal	\$ 50,000
Fire Department Service Charge	\$ 5,000
Pollutant Clean Up and Removal	\$ 25,000
Newly Acquired or Constructed Property	180 days
Buildings	\$ 1,000,000
Business Personal Property	\$ 250,000
Personal Effects and Property of Others	\$ 25,000
Valuable Papers and Records (Other Than Electronic Data)	\$ 100,000
Property Off-Premises (Including while in Transit)	\$ 50,000
Electronic Data in Transit	\$ 2,500
Outdoor Property	\$ 25,000
Accounts Receivable	\$ 50,000
Arson Reward <b>(Not available in New York)</b>	\$ 25,000
Back-up of Sewers or Drains	\$ 25,000
Extra Expense	\$ 25,000
Fine Arts	\$ 25,000
Fire Protective Devices	\$ 25,000
Loss of Refrigeration	\$ 25,000
Computer Equipment	\$ 25,000
Laptop/Portable Computers	\$ 5,000
Lock Replacement	\$ 1,000

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<u>Coverage Description</u>	<u>Limit of Insurance</u>
Money and Securities	
Inside the Premises	\$ 25,000
Outside the Premises	\$ 10,000
Off-Premises Services Interruption	\$ 25,000
Consequential Loss	\$ 25,000
Business Income	\$ 25,000
Business Income – Support Property	\$ 25,000
Employee Tools Coverage	\$ 10,000
Business Personal Property Limit Seasonal Increase	25%
Signs (Attached)	\$ 25,000
Special Deductible Provision	Included
Waiver of Coinsurance on losses \$10,000 or less	Included
Ordinance or Law	25% of the Building Limit subject to \$100,000 maximum

**A. The following changes apply to Section A. COVERAGE of the BUILDING AND PERSONAL PROPERTY COVERAGE FORM.**

**1. Broadened Premises**

The **within 100 feet of the described premises** description stated in Paragraph A.1.a.(5)(b), Building, Paragraph A.1.b., Your Business Personal Property, Paragraph A.1.c.(2), Personal Property of Others and Paragraph A.5., Coverage Extensions is deleted and replaced by **within 1000 feet of the described premises**.

**2. Additional Covered Property**

The following are added to item a. Building of Paragraph 1. Covered Property:

(6) Bridges, roadways, walks, patios or other paved surfaces;

(7) Retaining walls (except retaining walls used to contain water) that are not part of a building.

Item 6 listed above is deleted from paragraph 2. Property Not Covered.

Item I. of paragraph 2., Property Not Covered is deleted and replaced by the following:

I. Retaining walls used to contain water.

**3. Paragraph A.4. Additional Coverages is amended as follows:**

**b. Preservation of Property**

The 30 day limitation in paragraph A.4.b.(2) is increased to 60 days.

**4. The following are added to paragraph A.4. Additional Coverages:**

**g. Inventory and Appraisal**

We will pay up to \$5,000 for inventory costs and \$5,000 for appraisal costs due to loss or damage as a result of a Covered Cause of Loss to covered property. We will only pay if the costs are incurred and are reasonable and necessary to establish the amount of the loss. Attorney or public adjuster fees are not covered costs under this section.

**h. Employee Dishonesty**

1) We will pay for direct loss of or damage to business personal property, including money and securities, resulting from dishonest acts committed by any of your employees acting alone, or in collusion with other persons (except you or your partner) with the manifest intent to:

a) Cause you to sustain loss or damage; and



- b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
      - i) Any employee; or
      - ii) Any other person or organization.
  - 2) We will not pay for loss or damage:
    - a) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons; or
    - b) The only proof of which as to its existence or amount is dependent upon:
      - i) An inventory computation; or
      - ii) A profit and loss computation.
  - 3) The most we will pay for loss or damage in any one occurrence is \$50,000.
  - 4) All loss or damage:
    - a) Caused by one or more persons; or
    - b) Involving a single act or series of related acts;
      - is considered one occurrence.
  - 5) If any loss is covered:
    - a) Partly by this insurance; and
    - b) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest,

the most we will pay is the larger amount recoverable under this insurance or the prior insurance.
  - 6) We will pay for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
  - 7) This Additional Coverage does not apply to the dishonest act of any employee that occurs after the discovery by:
    - a) You; or
    - b) Any of your partners, officers, directors or trustees not in collusion with the employee of any dishonest act committed by that employee whether before or after becoming employed by you.
  - 8) Will pay only for covered loss or damage discovered no later than one year from the end of the Policy Period.

Coverage provided under this Additional Coverage is subject to a Deductible equal to the Property Deductible shown in the Declarations.

"Employee" means:

- 1) Any natural person:
  - a. While in your service and for 30 days after termination of service; and
  - b. Whom you compensate directly by salary, wages or commissions; and
  - c. Whom you have the right to direct and control while performing services for you; or
- 2) Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the premises.

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But "employee" does not mean any:

- 1) Agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- 2) Director or trustee except while performing acts coming within the scope of the usual duties of an employee.

**i. Money Orders and Counterfeit Money**

We will pay for your loss when you accept in good faith:

- 1) Any money order in exchange for goods or services if the money order is not paid when presented to the issuer; or
- 2) Counterfeit U.S. or Canadian paper money in the regular course of business.

The most we will pay under this additional coverage is \$2,500 in any one occurrence.

**j. Leasehold Interest**

We will pay for loss of "tenants lease interest" you sustain due to the cancellation of your lease. The cancellation must result from direct physical loss or damage at a premises described in the Declarations due to a Covered Cause of Loss.

"Tenants lease interest" means the difference between the rent you will pay under a new lease at the described premises; or elsewhere, and the rent you now pay.

The most we will pay for such loss is the least of:

- a) The total difference in rent based on the period of time remaining under your current lease; or
- b) The total difference in rent for one year; or
- c) \$25,000.

**k. Contract Penalty Clause**

We will pay the contract penalties you are required to pay to your customers as a result of any written clause in your contract for failure to timely deliver your product or service according to contract terms, provided the contract was executed prior to the loss or damage. The penalties must solely result from direct physical loss or damage by a Covered Cause of Loss to covered property. The most we will pay for penalties for all contracts in any one occurrence is \$5,000.

**l. Forgery or Alteration**

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent. We will pay for loss you sustain through acts committed or events occurring during the policy period. Regardless of the number of years this policy remains in force or the number of premiums paid, no limit of insurance cumulates from year to year or period to period.
- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
- (3) For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
- (4) We will not pay for loss resulting from any dishonest or criminal acts committed by you or any of your partners, employees, managers, members, officers, directors or trustees whether acting alone or in collusion with others.
- (5) The most we will pay for all loss, including legal expenses, under this Additional Coverage is \$25,000.

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